

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0212-03
Bill No.: HCS for SB 100
Subject: Courts; Civil Procedure; Criminal Procedure; Attorneys; Family Law; Judges
Type: Original
Date: April 29, 2013

Bill Summary: This proposal revises various laws regarding judicial procedures.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$10,981,406)	(Unknown - could exceed \$12,503,445)
Total Estimated Net Effect on General Revenue	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$10,981,406)	(Unknown - could exceed \$12,503,445)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Missouri Office of Prosecution Services	\$100,000	\$100,000	\$100,000
MODEX	\$426,402	\$511,683	\$511,683
Total Estimated Net Effect on <u>Other</u> State Funds	\$526,402	\$611,683	\$611,683

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 22 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	0	(286 FTE)	(286 FTE)
Total Estimated Net Effect on FTE	0	(286 FTE)	(286 FTE)

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Local Government	Unknown greater than \$1,304,306 to (Unknown)	Unknown greater than \$1,565,168 to (Unknown)	Unknown greater than \$1,565,168 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

§ 32.056 - Department of Revenue Release of Information

In response to a similar proposal from this year (HCS HB 371), officials from the **Department of Revenue (DOR)** stated this part of the proposal eliminates the requirement for a member of the judiciary enrolled in the Department's confidential records system to notify the Department once their qualification for enrollment comes to an end.

Currently, if a participant's qualification for enrollment comes to an end, but does not notify the Department of such change, the participant remains within the confidential records system. The Department would retain the ability of an individual who is enrolled in the Department's confidential records system to be removed from the confidential records system if such person's status changes, but would not require it.

DOR stated:

- The DMPO Confidential Records Process manual will need to be revised by a Management Analyst Specialist I requiring 40 hours of overtime at a cost of \$1,206 in FY 14; and
- The Restriction of Information, form 4568, will need to be revised requiring 40 hours of overtime for a Management Analyst Specialist I, at a cost of \$1,206 in FY 14.

In summary, DOR assumes a cost of \$2,412 in FY 2014 to implement this change.

Oversight assumes DOR is provided with core funding to handle a certain amount of activity each year. Oversight assumes DOR could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DOR could request funding through the appropriation process.

§§56.807 & 488.026 - \$4 Surcharge for Missouri Prosecuting Attorneys and Circuit Attorneys Retirement

In response to a similar proposal from this year (HB 169), officials from the **Prosecutor's and Circuit Attorney's Retirement System (PACARS)** stated the changes to section 56.807.5 makes the payments from the general revenues of the respective counties respond to the funded ratio of the assets and liabilities of PACARS, as determined by its actuaries. As such, the amendatory language operates to assure that PACARS is neither over funded nor underfunded. Thus, the system will be able to pay its pension liabilities as provided by law without concern that the funding mechanisms will result in excess funds in the system.

RS:LR:OD

ASSUMPTION (continued)

The amendment to sections 56.807.7 and 488.026 responds to the reduction in funding to PACARS which has resulted from the migration of counties to the Fine Collection Center in the recent past. As such, this amending language replaces a revenue stream which had previously guaranteed PACARS' ability to pay its pension liabilities as they arose. Taken together with the amendments to 56.807.5, the fiscal impact of the proposed legislation would secure PACARS' ability to pay its pension obligations as defined by law.

Officials from the **Joint Committee on Public Retirement** state that based on information provided by Office of the State Courts Administrator (CTS) in 2012, provisions included in this proposal would increase the surcharge contribution to PACARS. The estimated revenue as provided by the CTS of the inclusion of the \$4 fee paid to the fine collection center would be approximately \$525,476. Depending on the PACARS annual actuarial valuation and the resulting funded ratio, the county monthly contribution may be adjusted. The current funded ratio of 86% would allow for current monthly contribution levels to increase by 50%.

Officials from the **Office of the State Courts Administrator** state that based on the data for the past five years, FY 08 through FY 12, they assume that the average is approximately 125,145 fine collection center cases on which this \$4.00 surcharge could be applied. The department anticipates the revenue from a \$4.00 surcharge would be approximately \$500,580 in any given year.

§ 57.095 - Immunity for Law Enforcement Officers

Officials at the **Office of State Courts Administrator** assume there is no fiscal impact from this proposal.

In response to a similar proposal from this year (HB 468), officials from **Boone County Sheriff** assumed this part of the proposal would not have a fiscal impact.

§ 432.047 - Credit Agreement;

Officials from the **Office of the State Courts Administrator** assume this provision would not have a fiscal impact.

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal can be absorbed with existing resources.

ASSUMPTION (continued)

§ 443.723 - CPE Credits for Licensed Mortgage Loan Originator
Oversight assumes this section would not create a fiscal impact.

§ 452.400 - Paternity Testing
Officials at the **Office of State Courts Administrator** assume there is no fiscal impact from this proposal.

Officials from the **Department of Social Services - Family Support Division** assume the section would not have a fiscal impact.

No officials from the Circuit Court Clerks offices or the St. Louis Family Court responded to **Oversight's** request for a statement of fiscal impact.

§§ 453.030 & 453.050 - Adoption Consent
Officials from the **Office of the State Courts Administrator** assume this part of the proposal would not have a fiscal impact.

Officials from the **Department of Social Services (DOS)** stated this bill makes some procedural changes to the requirements for adoption consent.

Section 453.030.4 - Consent to Adoption - currently, written consent to an adoption must be acknowledged before a notary public. Alternatively, this bill allows written consent to be executed in front of a judge.

Section 453.030.5 - Waiver of Consent to Adoption - currently, a parent may waive the necessity of his or her consent to the future adoption of a child; however, such approval cannot be granted until the child is at least two days old. This bill allows written consent to be executed before a judge or acknowledged before a notary public.

Section 453.030.7 - Withdrawal of Written Consent to Adoption - current law allows written consent to be withdrawn anytime until it has been reviewed and accepted by a judge. This bill deletes that provision and makes consent final when executed, unless the consenting party, prior to a final decree of adoption, alleges and proves by clear and convincing evidence that consent was not freely and voluntarily given. The burden of proof rests with the consenting party.

There is no direct fiscal impact to the Department of Social Services. Taken as a whole, these procedures may make the adoption procedure smoother and quicker in some instances, but will not substantively change DOS procedures for adoptions of children in the department's care. Execution of consent before a notary public remains an option.

ASSUMPTION (continued)

§ 454.475 - Administrative Child Support Orders

Officials from the **Department of Social Services (DOS)** stated this bill authorizes hearing officers to administratively address incorrect and invalid administrative hearing decisions, orders, and proposed orders, better serving parties to a Family Services Division child support case. DOS' Family Support Division assumes the proposal would not have a fiscal impact on their agency.

§ 477.405 & 478.320 - Guidelines for Determining Need for Additional Court Personnel

Officials at the **Office of State Courts Administrator** assume this section of the proposal would provide the CTS with the ability to determine the need for additional full-time judicial positions indicated in a judicial weighted workload model for three consecutive years or more.

The judicial weighted workload for the past three consecutive years indicates the following circuits need for additional full-time judicial positions:

Circuit 11	St. Charles County	1 Associate Circuit Judge & 1 Court Clerk II
Circuit 16	Jackson County	1 Associate Circuit Judge & 1 Court Clerk II
Circuit 21	St. Louis County	3 Associate Circuit Judges & 3 Court Clerk II
Circuit 31	Greene County	2 Associate Circuit Judges & 2 Court Clerk II
Circuit 38	Christian County	1 Associate Circuit Judge & 1 Court Clerk II

This results in the addition of eight Associate Circuit Judges at \$116,858.40 per judge, per year, plus fringes and eight Court Clerk II at \$28,116, per clerk, per year, plus fringes. The total cost would be \$934,867.20 (Associate Circuit Judge Annual Salary \$116,858.40), \$711,506 fringes (Associate Circuit Judge Annual Fringes \$88,939.25), \$224,928 (Court Clerk II Salary \$28,116), \$114,139.71 (Court Clerk II Fringes at 50.745%).

These sections of the proposed legislation would not become effective until January 1, 2015. The total cost in FY 2015 would be \$1,003,247 (six months) and \$1,992,256 (twelve months).

§ 478.007 - DWI Court

Officials at the **Department of Corrections** assume there is no fiscal impact from this proposal.

In response to a similar proposal from this year (HB 354), officials from the **Department of Revenue** assumed there was no fiscal impact from this proposal.

Officials from the **Office of the State Courts Administrator** stated the proposal would allow

ASSUMPTION (continued)

for the utilization of private probation and parole services to provide judicial supervision in DWI courts. Since the legislation is permissive, we have no way of knowing how many circuits would create the programs. Any significant increase in workload will be reflected in future budget requests.

§ 479.085 - Springfield Allowed to Impose \$10 Surcharge on Municipal Code Violations

Officials from the **City of Springfield** did not respond to our request for fiscal impact.

Officials from **Office of the State Courts Administrator (CTS)** state this section would allow Springfield to impose a surcharge of \$10 on all municipal code violations for the purpose of funding the construction, remodel, repair and maintenance of the municipal court building.

CTS states there were 30,646 municipal code violations in FY 12, not including parking tickets, if parking tickets are included the total would be 36,421. If an additional \$10 was assessed on every case, and collections were 100%, the income would be approximately \$306,460 or \$364,210 if parking tickets were included.

Oversight will reflect a reflect a potential increase in income to Springfield of \$300,000 annually from this section.

§§ 488.026 & 488.5320 - MODEX

Officials from the **Office of the State Courts Administrator (CTS)** state the proposed legislation allows charges for cases disposed of by a traffic violations bureau and distributes the proceeds to MODEX and inmate security funds and creates the MODEX fund.

Based on FY 2012 data, there were approximately 170,561 traffic cases on which the \$6.00 surcharge could be applied. CTS anticipates the MODEX revenue from the surcharge would be approximately \$511,683 ($170,561 \times \$6 / 2$) in any given year, with an equal amount going to the counties' inmate security funds.

Officials at the **Department of Corrections** assume there is no fiscal impact from this proposal.

In response to similar legislation filed this year (HB 86), officials from the **Office of the State Treasurer** assumed this proposal would not have a fiscal impact.

With an August 28, 2013, effective date, **Oversight** will reflect 10 months of activity in FY 2014.

ASSUMPTION (continued)

§ 488.426 - Court Surcharge

Officials from the **Office of the State Courts Administrator (CTS)** state the proposed legislation would allow certain circuits (Clay County, Boone and Callaway Counties, St. Louis County, St. Louis City and Greene County) to charge up to a \$20 law library surcharge. The limit is now \$15.

CTS states during the past five years (2008 to 2012) an average of 150,697 civil cases were filed in these counties. If an additional \$5.00 fee was assessed on every case and collections were 100%, the additional income would total approximately \$753,485 in a given year.

<u>Circuit</u>	<u>Civil Cases</u>	<u>Potential additional \$5 library surcharge revenue</u>
Clay County (7 th)	16,395	\$ 81,975
Boone and Callaway Counties (13 th)	10,227	\$ 51,135
St. Louis County (21 st)	69,197	\$345,985
St. Louis City (22 nd)	35,445	\$177,225
Greene County (31 st)	19,433	\$ 97,165
TOTALS	150,697	\$753,485

Oversight assumes the proposal is permissive to the specific circuit courts and allows them to increase their this fee from \$15 to \$20. Oversight assumes not all circuits would choose to increase their fees; therefore, Oversight will range the fiscal impact from the proposal as "Up to \$753,485". Oversight will reflect these additional revenues as potential income to local political subdivisions. Oversight will reflect ten months of potential impact in FY 2014.

The proposal does not change or expand the requirements of the circuit courts or how this additional revenue must be spent. Therefore, for purposes of the fiscal note, Oversight will only reflect the potential additional income that may be realized by specific circuit courts as a result of the proposal.

§ 488.2250 - Fee for Transcripts

Officials from the **Office of the State Courts Administrator** state the current expense for transcripts is a total of \$106,458. This proposal raises the page rate for transcripts from \$2.00 per page where the party/attorney is paying for the transcript to \$3.50 and \$2.60 for indigents. The total amount for original transcripts (\$51,677) and transcript copies (\$13,395) would be \$65,072 at \$2.00 per page. The increase to \$2.60 per page would be an increase of \$19,522 for indigents.

In addition, the proposal also does not address the charge for additional copies, paper or electronic which could result in confusion in the future.

ASSUMPTION (continued)

Officials at the **Department of Social Services** assume there is no fiscal impact from this proposal.

Oversight will reflect this additional cost as "Less than \$100,000" in each fiscal year to the General Revenue Fund.

§ 513.430 - Exemption from Attachment

Officials at the **Office of State Courts Administrator** assume there is no fiscal impact from this proposal.

In response to a similar proposal from this year (SB 100), officials from the **Department of Revenue** assumed the proposal would not create a fiscal impact to their agency.

§ 537.602 - Immunity from Supervising Community Service

Officials from the **Office of Administration (COA)** state this proposal grants limited immunity to state employees who would supervise community service performed by an individual under a written agreement with a federal, state or local prosecutor. The state currently has sovereign immunity for this exposure; however, individual employees may receive additional protection under this act. However, the exclusion for gross negligence or intentional tort would likely be viewed as an additional waiver of sovereign immunity in these instances which could potentially lead to a cost to the Legal Expense Fund. On balance, we assume the potential cost through this added waiver, as limited as this exposure may be, would exceed the potential savings created by providing additional immunities to the individual state employee.

To the best of our knowledge, there have been no claims against the state or individuals providing supervision of community service workers. We believe the current utilization of community service workers is limited in state government and the risk for loss minimal.

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal could be absorbed with existing resources.

Officials from the **Office of the State Courts Administrator** and the **Office of Prosecution Services** each assume the proposal would not have a fiscal impact on their respective agencies.

Officials from the Department of Transportation, Missouri Department of Conservation, Taney County, Warren County, and Worth County did not respond to our request for fiscal impact.

Oversight assumes the proposal would not have a direct fiscal impact on state or local funds.

ASSUMPTION (continued)

§ 537.865 - Counsel for Indigent Granted Immunity

Oversight assumes this section would not have a direct fiscal impact.

§ 545.417 - Depositions in Criminal Cases

Officials from the **Office of the State Public Defender (SPD)** stated this would require them to begin paying for the prosecutor's copy of depositions. The FY 2012 SPD statewide payments for depositions and the subsequent copies was \$494,302. Local Public Defender Office budgets also paid for depositions of less than \$500. For the purpose of this fiscal note, they assumed that another 25% was paid from local budgets for a total of \$617,877. They further assumed that another 5% of this cost would cover the cost of providing a copy of the deposition to the prosecuting attorney. (\$31,666 per year)

Oversight notes that the SPD did not indicate how often their office pays for copies of depositions received from prosecutors. With this bill, public defenders would not have to pay for those copies.

Oversight assumes costs (providing copies to the opposing party) and savings (receiving free copies from the opposing party) to the SPD (state fiscal impact) and similar costs and savings to prosecuting attorneys (local fiscal impact) would result in a minimal net fiscal impact which could be absorbed within current appropriations.

§§ 559.100, 559.105 & 570.120 - Restitutions

Officials from the **Missouri Office of Prosecution Services (MOPS)** state this bill would have a positive fiscal impact on the Missouri Office of Prosecution Services. The estimated MINIMAL annual impact could be \$41,420. However the impact could be greater.

MOPS attempted to survey all 115 counties (which includes the City of St. Louis) as to how many cases in FY2010 that restitution was ordered. It should be noted restitution did not include cases of bad checks. Fifty-seven (57) counties responded to the survey. Of those 57 counties, there were a total of 8,284 cases in which restitution was ordered.

Assuming that the other 58 counties all have similar numbers, fiscal impact could be \$83,565 to \$115,020. The theory to determine the fiscal impact of HB 215 on the Missouri Office of Prosecution Services was to survey all counties as to how many cases there were in FY 2010 that restitution was ordered, then, add the total number of cases and multiple times the proposed minimum \$5.00 fee.

The counties that responded to the survey included: Adair, Andrew, Atchison, Audrain, Barry, Bates, Buchanan, Callaway, Camden, Cape Girardeau, Cedar, Christian, Clay, Cole, Cooper,

ASSUMPTION (continued)

Dade, Dent, Franklin, Gasconade, Gentry, Greene, Grundy, Harrison, Henry, Howard, Howell, Jasper, Jefferson, Johnson, Knox, Laclede, Livingston, Maries, Marion, Mercer, Miller, Newton, Oregon, Osage, Pemiscot, Pike, Platte, Randolph, Ray, Ripley, Saline, Shelby, St. Charles, St. Francois, St. Genevieve, St. Louis City, St. Louis County, Stone, Taney, Warren, Worth, Wright.

Based upon the estimate provided by MOPS, **Oversight** will assume an additional \$100,000 of restitution paid to the Missouri Office of Prosecution Services Fund annually.

Officials from the **Department of Corrections (DOC)** state the bill enhances the restitution statute to include not only tampering and stealing offenses, but for any offense the courts so choose. Once the court orders restitution it is considered a mandate and the DOC is authorized to remove funding from the inmate's account (if it exists) while the defendant is incarcerated. Failure to pay mandated restitution may result in extension to the maximum term of parole which keeps the offender under supervision longer with Probation and Parole (P&P) or a revocation may mean time served in prison. Monitoring offender's restitution payment status is now enhanced for P&P staff since the volume of restitution cases will increase.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY12 average of \$17.059 per offender, per day, or an annual cost of \$6,227 per inmate) or through supervision provided by the Board of Probation and Parole (FY12 average of \$4.960 per offender, per day or an annual cost of \$1,810 per offender).

In summary, passage of this bill has the potential for costs to the department and the exact fiscal impact is unknown for the DOC per each year.

Oversight assumes the cost anticipated by the DOC could exceed \$100,000 each year.

Oversight will assume the proceeds collected into the local Administrative Handling Cost Fund would be used in the same year by prosecuting attorneys and circuit attorneys.

§ 565.020 - Capital Punishment

Officials at the **Department of Social Services** assume there is no fiscal impact from this proposal.

Officials at the **Department of Corrections** assume this increases the age to 18 before an offender can be sentenced to death or life imprisonment for first degree murder. Offenders under 18 years of age at the time of the offense shall be sentenced to life and no parole for 50 years. Fiscal impact for passage of this section would be beyond the scope of this fiscal note. In

ASSUMPTION (continued)

summary, passage of this bill has the potential for fiscal impact to the department and the exact cost is unknown per each year.

Oversight assumes this section of the proposal would not have a direct fiscal impact to the state during the fiscal note period.

§§ 600.042, 600.044, 600.052, 600.053 & 600.090 - State Public Defender

Officials from the **Office of the State Public Defender (SPD)** state the proposal would have the following impact on caseload: this legislation would contract out over 61,000 of the over 84,000 cases that made up the total FY 2012 public defender caseload. SPD states that a little over 24,000 are non-sex C/D cases; around 18,000 are misdemeanor & traffic cases; and just under 19,000 are probation violation cases (felony & misdemeanor).

Impact on Staffing = SPD's best estimate at this time is that this legislation would result in a reduction in 230 attorney positions and 77 support staff.

CAVEAT = This estimate may change after completion of the new weighted workload study SPD was directed to complete by the auditor. The new study should be done by the fall of 2013, and will be available in time for the spring, 2014 legislative session when the appropriations decisions associated with this legislation would be made. More information on the new weighted workload study is available upon request.

For purposes of this fiscal note, SPD utilized the standard 2,080 state employee annual work hours, less the 216 minimum hours of annual leave SPD is required to provide and the 15 hours continuing legal education attorneys must have each year to maintain their licenses to practice law. IMPORTANT - No time was deducted for attorney travel hours to courts or jails in other counties, for time spent by the managing attorney in supervising / mentoring other lawyers rather than working on his/her cases, for FMLA, sick, or military leave, or for time attorneys spent doing necessary tasks other than direct work on cases -- even though all of these things impact the amount of time an attorney has to work on cases and all will be part of the weighted workload study underway.

The interim case weights used here were the American Bar Association (ABA) recommended minimums for felony cases except where MSPD's own time study in 2006 indicated that attorneys were spending more time than the recommended minimum, in which case the actual time recorded by the attorneys for that particular case type was used as the case weight. See Principle 5, Footnote 19 of ABA's Ten Principles of Public Defense Systems, available upon request or on the ABA's website.

ASSUMPTION (continued)

Fiscal Impact = If SPD is correct on the number of FTE reductions, the state would have \$20.9 million to put toward the cost of contracting. If the cases were contracted at the rates SPD currently pays for contracts of those case types, it would cost the state an additional \$9.4 million to contract out these 61,000+ cases. SPD's current contract rate for misdemeanors and probation violations is \$375 and \$750 for non-sex C/D felonies.

Note: This estimate does not include any mileage reimbursements, additional fees for trials, either bench or jury, or for unexpectedly complex cases, both of which MSPD currently pays contract counsel. It assumes that fees for litigation expenses remain separate, as described above.

Costs to Counties / Office Space Issues = SPD has 33 trial district offices serving 45 judicial circuits and 115 counties. By statute, office space for these district offices is provided and paid for by the counties served by that district office, each county paying a proportion of the total rent and utilities according to comparative population. This is significant to both the provision requiring public defender districts to align with judicial circuits and to the impact upon the counties of the significant reduction of their local public defender staff, if not complete closure of some defender offices, due to the move toward privatization.

Each time the geographic boundaries of a defender office's area of service are changed, the leases which the counties have signed and the respective payment obligations of all the counties involved, are also impacted. Counties pulling out of a particular office's service area are no longer receiving services from that office but are obligated under the signed lease to pay a proportion of the cost of the lease of that office. If the lease could be renegotiated, the remaining counties would be required to pick up a larger portion of the lease even though that was never planned for in their budgets. Even where the switch in coverage areas does not change the number of counties (i.e. one is removed and a different one is added) the amounts owed by each county can and usually do shift. The obligation of the counties is allocated by population, so the removal of a more populous county and its replacement with a lesser populated county shifts a higher percentage of the rent costs for the public defender office to the other counties in the district.

It is impossible to determine the cost of public defender offices realigning to match judicial circuits until the Public Defender Commission determines the new geographic boundaries. Only then can it be determined which offices need to move, the costs of those moves, which offices are closing, where are new offices opening, what the counties will agree to pay for in terms of office space adjustments and where are the gaps that MSPD may have to step in and cover to keep an office from becoming homeless as has happened before.

ASSUMPTION (continued)

There is another complication in this process: The duration of leases also vary by district office all around the state -- i.e. they do not all expire at one time making it possible to conveniently rearrange all into new geographic boundaries and then sign new leases. While the lease in two of the counties that make up one-half of a judicial circuit may expire this year, the lease for two other counties that need to move into that circuit may not expire for five years. This makes transitioning offices to congruency with judicial circuits a very complicated task. Counties are certainly not going to pay for overlapping leases, which means that leases entered into by the counties will have to be broken to make this happen. Each lease generally has a fiscal year end out clause if the legislature no longer funds the public defender office -- or, as in this case, so drastically reduces the size of the offices that office space changes will need to be made. However, not only does that often cost county commissioners good will with their local constituents who are the landlords for the building, there is also a cost penalty involved. Most leases amortize the costs of renovation and build-out over the life of the lease. If the lease is terminated early, those build-out costs become immediately due in full, payable by the counties who signed the leases. This is without regard to whether the counties have budgeted for such large payments to come due all at once.

Probable Costs Not Yet Calculated = MSPD's initial estimate is that approximately ten public defender offices are likely to close altogether as a result of this legislation because the remaining staff would be insufficient to adequately cover the geographic spread of multiple county dockets and court appearances. This fiscal note has not yet calculated the costs associated with such office closures since that would be dependent on the impact of aligning PD districts with judicial circuits, but there would be additional fiscal impact.

In summary, the SPD assumed a savings from the reduction of 230 Assistant Public Defenders and the 77 support staff to total approximately \$22.5 million annually, starting in FY 2015. The SPD also assumes the cost to contract private counsel to provide the legal services to total approximately \$32 million annually.

According to Section B, the changes in Sections 600.042 - 600.090 would become effective July 1, 2014. Therefore, **Oversight** will reflect the fiscal impact of these sections starting in FY 2015. Oversight will utilize SPD's estimates regarding savings from the reduction of SPD personnel as well as the cost for the contract services.

Officials from the **Office of Administration - Division of Purchasing and Materials Management (OA-DPMM)** states Section 600.042.11 would require DPMM to bid for legal services with private attorneys to provide legal defense for criminal defendants qualified to receive public defender services for all nonsexual class C and D felonies, all misdemeanor cases, all traffic cases, and all probation violation cases.

ASSUMPTION (continued)

Conducting bidding, evaluating competing bids, awarding and administering contracts for criminal defense services would significantly increase DPMM's workload. Currently, the Public Defender's office has 70,000 contracts for the type of cases stated in this bill section.

DPMM has determined that a minimum of (5) Buyer IV positions (each at \$52,176 annually) are needed to oversee the fulfillment of the tasks stated in the bill. The Buyer IV position salary is based on the range A32 beginning Step H. This position will be responsible for handling the complete bidding process from bid specification writing to the awarding and some contract administration of these anticipated 70,000 contracts.

In summary, OA-DPMM assumes the cost the five additional buyers would total roughly \$410,000 in FY 2015 and FY 2016.

Bill as a Whole

Officials at the **Missouri Highway Patrol, Department of Mental Health, Department of Insurance, Financial Institutions and Professional Registration** and the **Office of the State Auditor** assume there is no fiscal impact from this proposal.

Officials at the **Joint Committee on Administrative Rules** assume there is no fiscal impact from this proposal.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

This proposal could increase Total State Revenues.

FISCAL IMPACT - State Government

FY 2014
(10 Mo.)

FY 2015

FY 2016

GENERAL REVENUE

Savings - Office of the State Public
 Defender - contracting out for legal
 services affects SPD's workload
 sufficiently to reduce staff by 230
 assistant PDs and 77 support staff

Personal Service	\$0	\$13,386,261	\$13,520,124
Fringe Benefits	\$0	\$6,792,858	\$6,860,787
Expense and Equipment	<u>\$0</u>	<u>\$2,074,623</u>	<u>\$2,126,488</u>
<u>Total Savings</u> - SPD §600.042	\$0	\$22,253,742	\$22,507,399
FTE Change - SPD	0 FTE	(307 FTE)	(307 FTE)

Costs - Office of Administration - DPMM

Personal Service	\$0	(\$263,489)	(\$266,124)
Fringe Benefits	\$0	(\$133,707)	(\$135,045)
Expense and Equipment	<u>\$0</u>	<u>(\$12,095)</u>	<u>(\$1,744)</u>
<u>Total Costs</u> - OA - DPMM §600.042	\$0	(\$409,291)	(\$402,913)
FTE Change - OA - DPMM	0 FTE	5 FTE	5 FTE

Costs - Office of State Courts

Administrator

Personal Service	\$0	(\$581,022)	(\$1,164,316)
Fringe Benefits	\$0	(\$413,393)	(\$827,940)
Expense and Equipment	<u>\$0</u>	<u>(\$8,832)</u>	<u>\$0</u>
<u>Total Costs</u> - CTS §477.405	\$0	(\$1,003,247)	(\$1,992,256)
FTE Change - CTS	\$0 FTE	16 FTE	16 FTE

Costs - SPD §600.042 - Contract to
 provide legal services

\$0	(\$31,722,610)	(\$32,515,675)
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Costs - CTS §488.2250 - Increase in court
 reporter fees

(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
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<u>FISCAL IMPACT - State Government</u> (continued)	FY 2014 (10 Mo.)	FY 2015	FY 2016
<u>Costs - Department of Corrections</u>			
Potential longer incarceration, potential extension to the maximum term of parole (longer supervision) and additional monitoring (Section 559.105)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$10,981,406</u>)	(Unknown - could exceed <u>\$12,503,445</u>)
Estimated Net FTE Change for the General Revenue Fund	0	(286 FTE)	(286 FTE)
 MISSOURI OFFICE OF PROSECUTION SERVICES FUND			
<u>Income</u> - \$5 per each crime victim to whom restitution is paid. (559.100.3)	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>
ESTIMATED NET EFFECT TO THE MISSOURI OFFICE OF PROSECUTION SERVICES FUND	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>
 MODEX FUND			
<u>Income</u> - one-half of \$6 surcharge for infractions processed through the traffic violations bureau §§488.026 & 488.5320	<u>\$426,402</u>	<u>\$511,683</u>	<u>\$511,683</u>
ESTIMATED NET EFFECT TO THE MODEX FUND	<u>\$426,402</u>	<u>\$511,683</u>	<u>\$511,683</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
LOCAL POLITICAL SUBDIVISIONS			
<u>Revenue</u> - Increase in surcharge for contribution to PACARS §§56.807	\$417,150	\$500,580	\$500,580
<u>Expense</u> - Surcharge contribution to PACARS §56.807	(\$417,150)	(\$500,580)	(\$500,580)
<u>Income</u> into the counties' inmate security fund from one-half of \$6 surcharge for infractions processed through the traffic violations bureau §§488.026 & 488.5320	\$426,402	\$511,683	\$511,683
<u>Revenue</u> - potential increase in law library surcharge from \$15 to \$20 in certain circuits. §488.426	Up to \$627,904	Up to \$753,485	Up to \$753,485
<u>Income</u> - Springfield - allowed a \$10 surcharge on all municipal code violations. §479.085	\$250,000	\$300,000	\$300,000
<u>Income</u> - Administrative Handling Costs - \$25 - \$75 per restitution (559.100.3)	Unknown	Unknown	Unknown
<u>Income</u> - Installment Costs - \$2 per installment payment (559.100.3)	Unknown	Unknown	Unknown
<u>Costs</u> - restructuring of the public defender district offices (§600.042(12))	(Unknown)	(Unknown)	(Unknown)
<u>Costs</u> - prosecuting attorney or circuit attorney costs to implement provision of the bill in collecting restitution.	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT TO THE ADMINISTRATIVE HANDLING COST FUND	<u>Unknown</u> <u>greater than</u> <u>\$1,304,306 to</u> <u>(Unknown)</u>	<u>Unknown</u> <u>greater than</u> <u>\$1,565,168 to</u> <u>(Unknown)</u>	<u>Unknown</u> <u>greater than</u> <u>\$1,565,168 to</u> <u>(Unknown)</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

§§56.807 & 488.026 - Currently, each county treasurer must transfer a specified sum of money each month to the Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund for use by the fund.

Beginning August 28, 2013, the county contribution must be adjusted in accordance with the following schedule based on the retirement system's actuarial valuation report:

- (1) If the system's funding ratio exceeds 120%, no monthly sum must be transmitted;
- (2) If the system's funding ratio is between 111% to 120%, the monthly sum transmitted must be reduced 50%;
- (3) If the system's funding ratio is between 90% and 110%, the monthly sum transmitted must remain the same;
- (4) If the system's funding ratio is between 80% and 89%, the monthly sum transmitted must be increased 50%; and
- (5) If the system's funding ratio is less than 80%, the monthly sum transmitted must be increased 100%.

Currently, a surcharge of \$4 is assessed and collected in all criminal cases filed in court, including any violation of a county ordinance or any violation of the state's criminal or traffic laws, including infractions. The proposal adds any person who has pled guilty and paid a fine through a fine collection center to the list of those who are to be assessed the surcharge.

This bill requires restitution to be paid through the office of the prosecuting or circuit attorney. The provisions cannot prohibit the prosecuting attorney or circuit attorney from contracting with or utilizing another entity for the collection of the restitution and costs. Each prosecuting or circuit attorney who takes any action to collect restitution must collect from the person paying restitution an administrative handling cost of \$25 for restitution in an amount of less than \$100, \$50 for an amount between \$100 and \$249, and an additional fee of 10% of the total restitution for an amount of \$250 or more. The maximum fee for administrative handling costs cannot exceed \$75. A \$2 installment cost must also be assessed for each installment payment, except for the first installment, until the amount of restitution is paid in full.

The moneys collected by the prosecuting or circuit attorney must be deposited into the newly created Administrative Handling Cost Fund to be expended by the prosecuting or circuit attorney for office supplies and equipment, capital outlay, trial preparation expenses, additional staff, and

FISCAL DESCRIPTION (continued)

employees' salaries. In addition to the administrative handling cost, the prosecuting or circuit attorney must collect \$5 for each crime victim to whom restitution is paid to be deposited into the Missouri Office of Prosecution Services Fund.

Currently, any person who has been found guilty of or pled guilty to the offense of tampering or stealing may be ordered by the court to make restitution to the victim. The bill allows the court to order restitution to be paid by any person who has been found guilty or has pled guilty to any offense. The list of allowable expenses for restitution is revised to only include, but not be limited to, a victim's reasonable expenses to participate in the prosecution of the crime.

Currently, any person eligible to be released on parole for the offense of tampering or stealing may be required as a condition of parole to make restitution. The bill requires any person eligible to be released on parole to make restitution as a condition of parole.

The court may set an amount of restitution to be paid by any person who has been found guilty of an offense to the victim for the victim's losses due to the offense that may be taken from the inmate's account at the Department of Corrections while he or she is incarcerated; and upon release from imprisonment, the payment of any unpaid balance may be collected as a condition of conditional release or parole.

Currently, the State Public Defender Director must contract for legal services with private attorneys on a case-by-case basis and with assigned counsel as the Public Defender Commission deems necessary considering the needs of the area. The bill repeals this provision and requires the director to contract out legal services with private attorneys for all nonsexual class C and class D felonies, all misdemeanor cases, all traffic cases, and all probation violation cases. The Office of Administration must handle the bidding process for all the contracts. Contracts must be awarded through a competitive bidding process designed to award contracts to the lowest and best bidder and must give priority to bidders who exhibit experience in criminal law, demonstrate the capacity to provide effective representation in all assigned cases, and carry sufficient malpractice insurance. The Office of Administration must also administer all contracts made by the director, including contracts for cases that are conflicts of the public defender. The director may contract out for legal services with private attorneys direct appeals of any cases handled by public defenders.

The director must also, with the approval and on behalf of the commission, contract with private attorneys for the collection and enforcement of liens and other judgments owed to the state for services rendered by the state public defender system if the prosecuting attorney does not collect and enforce those liens and judgments.

FISCAL DESCRIPTION (continued)

The director must establish district offices, the boundaries of which must coincide with existing judicial circuits. Any district office may contain more than one judicial circuit within its boundaries, but no judicial boundary can include any geographic region of a judicial circuit without including the entire judicial circuit.

The bill repeals the requirement that the director and defenders must provide legal services to an eligible person who is detained or charged with any felony, including appeals from a conviction in the case, or who is detained or charged with a misdemeanor that will probably result in confinement in the county jail upon conviction and requires them to provide legal services to an eligible person who is detained or charged with a class A or class B felony, including appeals from a conviction in the case or a person who is detained or charged with a felony sexual offense. The director may contract out for legal services with private attorneys direct appeals of any cases handled by public defenders.

The public defender must provide legal services in those cases in which a private attorney who has a contract for the provision of legal services has a conflict of interest.

The director and defenders are prohibited from providing legal services or contracting out for legal services with private attorneys for motions claiming ineffective assistance of counsel or the representation of any crime victim or witness. Currently, 18 C.S.R. 10-4.010 authorizes a local public defender office to certify its maximum caseload has been exceeded and thereafter limit its availability to take additional cases after consultation with the presiding court.

The public defender must pay the prosecuting or circuit attorney a collection fee of 20% of the funds collected by the prosecuting or circuit attorney on behalf of the public defender. The fee must be deposited in the same manner as collection fees are deposited in the county treasury for delinquent taxes. If the prosecuting attorney does not take action to enforce the judgment within 90 days of entry, the commission may contract with private collection agencies.

The provisions of the bill become effective July 1, 2014, except for the provisions of the bill regarding 18 C.S.R. 10-4.010 that contain an emergency clause.

Sections 477.405 & 478.320 would provide the Office of the State Courts Administrator with the ability to determine the need for additional full-time judicial positions indicated in a judicial weighted workload model for three consecutive years or more.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the State Courts Administrator
Office of Prosecution Services
Office of the State Public Defender
Office of Administration
Department of Corrections
Department of Insurance, Financial Institutions and Professional Registration
Office of the State Auditor
Office of the Secretary of State
Joint Committee on Administrative Rules
Joint Committee on Public Employee Retirement
Prosecuting Attorney's Retirement System
Missouri Highway Patrol
Department of Mental Health



Ross Strobe
Acting Director
April 29, 2013